

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 09-10235-DPW

ERROLL TYLER AND NAUTICAL TOURS,
INC.,

PLAINTIFFS

v.

THE CITY OF BOSTON

DEFENDANT.

**DEFENDANT, THE CITY OF BOSTON'S ANSWER
TO PLAINTIFF'S COMPLAINT**

The Defendant in the above-captioned action, City of Boston (the "Defendant") hereby set forth its answers to each of the similarly numbered paragraphs of the Plaintiffs' Complaint.

INTRODUCTION

Insofar as this paragraph of the Complaint is an introduction describing the lawsuit and asserting that certain statutes are applicable, no answer is required.

JURISDICTION

1. Paragraph 1 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 1.
2. Paragraph 2 sets forth a legal conclusion to which no answers are required.

VENUE

3. Paragraph 3 sets forth a legal conclusion to which no answers are required.

PARTIES

4. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4.
5. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5.
6. Defendant, City of Boston admits the allegations contained in paragraph 6.
7. Defendant, City of Boston admits that Edward Davis is the Boston Police Commissioner and that he has final decision-making authority for sightseeing licenses. Sentence 3 sets forth a legal conclusion to which no answers are required.

STATEMENT OF FACTS

Plaintiffs Erroll Tyler and Nautical Tours

8. There are no allegations against the City Defendants in paragraph 8 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
9. There are no allegations against the City Defendants in paragraph 9 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
10. There are no allegations against the City Defendants in paragraph 10 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are

without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

11. There are no allegations against the City Defendants in paragraph 11 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
12. There are no allegations against the City Defendants in paragraph 12 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
13. There are no allegations against the City Defendants in paragraph 13 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
14. There are no allegations against the City Defendants in paragraph 14 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
15. There are no allegations against the City Defendants in paragraph 15 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

The Fight with Cambridge over a Jitney License

16. There are no allegations against the City Defendants in paragraph 16 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
17. Paragraph 17 sets forth legal conclusions to which no answers are required. There are no allegations against the City Defendants in paragraph 17 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
18. Paragraph 18 sets forth legal conclusions to which no answers are required. There are no allegations against the City Defendants in paragraph 18 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
19. There are no allegations against the City Defendants in paragraph 19 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
20. There are no allegations against the City Defendants in paragraph 20 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

21. There are no allegations against the City Defendants in paragraph 21 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
22. There are no allegations against the City Defendants in paragraph 22 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
23. There are no allegations against the City Defendants in paragraph 23 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
24. There are no allegations against the City Defendants in paragraph 24 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
25. There are no allegations against the City Defendants in paragraph 25 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
26. There are no allegations against the City Defendants in paragraph 26 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are

without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

27. There are no allegations against the City Defendants in paragraph 27 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
28. There are no allegations against the City Defendants in paragraph 28 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
29. There are no allegations against the City Defendants in paragraph 29 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
30. There are no allegations against the City Defendants in paragraph 30 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.
31. There are no allegations against the City Defendants in paragraph 31 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

32. There are no allegations against the City Defendants in paragraph 32 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

33. There are no allegations against the City Defendants in paragraph 33 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

Boston Now Stands in the Way

34. There are no allegations against the City Defendants in paragraph 34 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

35. The referenced regulations speak for themselves. Insofar as paragraph 35 sets forth legal conclusions or legal argument, no response is required.

36. Defendant, City of Boston denies the allegations in paragraph 36.

37. Defendant, City of Boston denies the allegations in paragraph 37.

38. Defendant, City of Boston denies the allegations in paragraph 38. Defendant, City of Boston further states Sergeant Thomas Tierney was a first line supervisor within the Hackney Unit who did not hold any type of policy making position and any statements he made to that effect would be incorrect.

39. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 39. Please see response to paragraph 38 regarding Sergeant Thomas Tierney.

40. Defendant, City of Boston denies the allegations in paragraph 40 regarding the need for a municipal sightseeing license. Defendant, City of Boston admits the allegations concerning the moratorium and the issuance of new licenses.

41. Defendant, City of Boston denies the allegations contained in paragraph 41. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 41 regarding the Plaintiffs resolution to litigate.

42. Defendant, City of Boston denies the allegations contained in paragraph 42 as the Plaintiff did not apply.

The Moratorium

43. Defendant, City of Boston admits the allegations contained in paragraph 43.

44. Defendant, City of Boston denies the allegations contained in paragraph 44. These licenses are replacement licenses issued solely for usage by existing licensed companies when a vehicle in their fleet is unusable.

45. Defendant, City of Boston denies the allegations contained in paragraph 45. See answer to paragraph 44.

46. Defendant, City of Boston admits the allegations contained in paragraph 46.

47. Defendant, City of Boston denies the allegations contained in paragraph 47.

48. Defendant, City of Boston denies the allegations contained in paragraph 48.

49. Defendant, City of Boston denies the allegations contained in paragraph 49.

50. Defendant, City of Boston denies the allegations contained in paragraph 50.

51. Defendant, City of Boston denies the allegations contained in paragraph 51.

52. Defendant, City of Boston denies the allegations contained in paragraph 52.

53. Defendant, City of Boston denies the allegations contained in paragraph 53.

Federal Seaports and Federal Navigable Waterways

54. There are no allegations against the City Defendants in paragraph 54 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

55. Defendant, City of Boston admits the allegations contained in paragraph 55 but further states that the Boston also has concurrent jurisdiction.

56. There are no allegations against the City Defendants in paragraph 56 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

57. There are no allegations against the City Defendants in paragraph 57 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis. The Defendant, City of Boston further states that the Boston also has concurrent jurisdiction.

58. Defendant, City of Boston denies the allegations contained in paragraph 58.

59. There are no allegations against the City Defendants in paragraph 59 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are

without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

Injury to Plaintiffs

60. Paragraph 60 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 60.

61. Paragraph 61 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 61.

CLAIMS

Count One

Privileges and Immunities: Access to Federal Seaports and Federal Navigable Waterways

62. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

63. Paragraph 63 sets forth legal conclusions to which no answers are required.

64. There are no allegations against the City Defendants in paragraph 64 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

65. There are no allegations against the City Defendants in paragraph 65 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

66. Paragraph 66 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 66.

67. Defendant, City of Boston denies the allegations contained in paragraph 67.

68. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 68. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 68.

Count Two

Privileges or Immunities: Intrastate Travel

69. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

70. Paragraph 70 sets forth legal conclusions to which no answers are required.

71. Paragraph 71 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 71.

72. Defendant, City of Boston denies the allegations contained in paragraph 72.

73. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 73. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 73.

Count Three

Due Process

74. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

75. Paragraph 75 sets forth legal conclusions to which no answers are required.

76. Paragraph 76 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 76.

77. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 77. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 77.

Count Four

Due Process: Right to Earn an Honest Living

78. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

79. Paragraph 79 sets forth legal conclusions to which no answers are required.

80. Paragraph 80 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 80.

81. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 81. To the extent

that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 81.

Count Five

Due Process: Moratorium

82. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

83. Paragraph 83 sets forth legal conclusions to which no answers are required.

84. Paragraph 84 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 84.

85. There are no allegations against the City Defendants in paragraph 85 and therefore no answer is required. Insofar as the City is required to answer, the City Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters alleged and therefore denies the allegations on that basis.

86. Defendant, City of Boston denies the allegations contained in paragraph 86.

87. There are no allegations against the City Defendants in paragraph 87 and therefore no answer is required. Insofar as the City is required to answer, the City of Boston denies the allegations contained in paragraph 87.

Count Six

Due Process: Protectionism

88. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

89. Paragraph 89 sets forth legal conclusions to which no answers are required.

90. Paragraph 90 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 90.

91. Defendant, City of Boston denies the allegations contained in paragraph 91.

92. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 92. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 92.

Count Seven

93. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

94. Paragraph 94 sets forth legal conclusions to which no answers are required.

95. Paragraph 95 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 95.

96. Paragraph 96 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 96.

97. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 97. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 97.

Count Eight

Equal Protection: Selective Enforcement

98. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

99. Paragraph 99 sets forth legal conclusions to which no answers are required.

100. Defendant, City of Boston denies the allegations contained in paragraph 100.

101. Defendant, City of Boston denies the allegations contained in paragraph 101.

102. Paragraph 102 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 102.

103. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 103. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 103.

Count Nine

Statutory Interpretation: Chapter 399 of the Acts of 1931

104. Defendant, City of Boston, hereby repeats, re-alleged and incorporates herein its answers to paragraphs 1-61.

105. Paragraph 105 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 105.

106. Paragraph 106 sets forth legal conclusions to which no answers are required. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 106.

107. Defendant, City of Boston is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 107. To the extent that it alleges facts against the Defendant, City of Boston, the Defendant denies the allegations contained in paragraph 107.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs are barred from bringing their claims due to their own actions and/or inactions.

THIRD AFFIRMATIVE DEFENSE

The claims against the City Defendants must fail due to the equitable doctrine of Laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert the claims alleged in the complaint.

FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the City Defendants state that at all times relevant, they acted reasonably, within the scope of their official discretion with an objectively reasonable belief that their actions were lawful.

SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the City Defendants state that at all times they acted in good faith and upon reasonable belief that these actions were required and in compliance with all relevant laws and circumstances.

SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the City Defendants state that they were justified in their acts or conduct and that therefore the Plaintiff's claim is without merit.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the City Defendants state that their acts and conduct were performed according to, and protected by, law and/or legal process and that therefore, the Plaintiff's claim is without merit.

NINTH AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted pursuant to 42 U.S.C. § 1983, because it fails to show any factual connection between any alleged, unconstitutional custom, policy or practice of the Defendant, City of Boston, and the violation of the Plaintiff's constitutional rights.

TENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, Defendant, City of Boston, states that no act or omission by it was a proximate cause of damages, if any, allegedly sustained by the Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiff has not been deprived of any rights secured by either the constitution or the laws of the United States or the Commonwealth of Massachusetts.

TWELFTH AFFIRMATIVE DEFENSE

At all times hereto, Defendant, City of Boston, acted in accordance with all relevant laws of the United States and the Commonwealth of Massachusetts.

JURY DEMAND

The City Defendants demand a trial by jury on all issues.

WHEREFORE, the City Defendant respectfully request that this Honorable Court enter judgment dismissing the Complaint and grant such other and further relief to the City Defendant as justice may require, including costs.

Respectfully submitted,
DEFENDANT,
CITY OF BOSTON,

William F. Sinnott
Corporation Counsel
By its attorney:

/s/ Kristina Racek Pechulis

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CERTIFICATE OF SERVICE

I, Kristina Racek Pechulis, hereby certify that I caused the foregoing to be electronically filed with the United States District Court of Massachusetts using the CM/ECF system and that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) .

/s/ Kristina Racek Pechulis
Kristina Racek Pechulis